

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.27472 of 2005

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Date: October 3, 2007
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Between:

The Karimnagar-Adilabad Milk Producer's
Co-operative Union Ltd., Karimnagar Dairy
Complex, Karimnagar, rep. by its General
Manager V.Hanumantha Reddy, son of
Ram Reddy, aged 55 years.

... Petitioner.

And

1. The Government of A.P.,
rep. by Secretary,
Labour Employment Training &
Factories (LAB.I) Department,
Secretariat, Hyderabad and 2 others.

... Respondents

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ORDER:

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This writ petition is filed for a writ of *Certiorari* to quash the Award dated 19.7.2005 in I.D.No.90 of 2003 passed by the Chairman, Industrial Tribunal-cum-Labour Court, Godavari Khani, whereby he set aside the proceedings dated 02.5.2003 and directed reinstatement of respondent No.2 into service with continuity of service, but without back wages.

2. The facts in brief are as follows:-

Respondent No.2 was initially appointed as a time scale worker by the Andhra Pradesh Dairy Development Co-operative Federation Ltd., respondent No.3. He was promoted as Junior Assistant in the year 1987 and as Senior Assistant in the year 1991. Before registration of petitioner's society as Mutually Aided Cooperative Society, it was affiliated to respondent No.3 and the employees working with respondent No.3 were posted in the petitioner's society

from time to time and respondent No.2 is one such employee who was allotted to the petitioner society.

3. A charge sheet was issued to respondent No.2 on 13.12.2000 while he was working as Senior Assistant, MCC at Adilabad. The charge sheet contained two charges pertaining to willful subordination and disobedience and also dishonesty in connection with the business of the union and negligence while on duty. Respondent No.2 submitted his explanation on 21.01.2001. Respondent No.2 was served with another charge sheet on 06.8.2001, which also consisted of two charges pertaining to willful or habitual absenteeism from duty by him. He submitted a reply to the said charge sheet on 14.9.2001.

4. Not being satisfied with the replies submitted by respondent No.2 the petitioner appointed an enquiry officer on 22.01.2002 to hold enquiry into the charges framed under both the charge sheets. After completion of the enquiry, the enquiry officer submitted his report dated 05.11.2002 wherein he held respondent No.2 guilty of all the charges. A show cause notice was issued on 09.01.2003 to respondent No.2, to which a reply was submitted by him on 30.01.2003. After considering the charge sheet and the reply, the disciplinary authority of the petitioner passed order dated 23.5.2003 dismissing respondent No.2 from service. Feeling aggrieved by the said order, respondent No.2 moved the Industrial Tribunal-cum-Labour Court, Godavari Khani (for short 'the Tribunal'), under Section 2-A (2) of the Industrial Disputes Act, 1947, by way of I.D.No.90 of 2003. The said I.D. was disposed of by the impugned award by the Tribunal. The petitioner filed this writ petition questioning the said award.

5. Heard Sri Gandra Mohan Rao, learned counsel for the petitioner, Sri A.K.Jayaprakash Rao, learned counsel for respondent No.2 and Sri Dilip Rao, learned counsel for respondent No.3 and perused the record.

6. Learned counsel for the petitioner submits that the Tribunal committed a serious error in setting aside the order of dismissal passed against the respondent No.2 on the simple ground that the latter was not served with a copy of the enquiry report. According to the learned counsel, the approach of the Labour Court is contrary to the law laid down by the Constitution Bench of the Supreme Court in **Managing Director, ECIL, Hyderabad and others V. B.Karunakar and others**^[1]. The learned counsel contended that even if the Tribunal found that the enquiry report was not supplied to the delinquent employee (workman), it is bound to follow the procedure mentioned in paragraph 31 of the said judgment of the Supreme Court and without being satisfied that non-supply of enquiry report has caused prejudice to the delinquent workman the Tribunal has no jurisdiction to set aside the order imposing penalty on the workman. The learned counsel, therefore, contended that the award is wholly unsustainable and is liable to be set aside.

7. Sri A.K.Jayaprakash Rao, learned counsel for respondent No.2 made valiant efforts to convince me that the judgment in Managing Director, ECIL, Hyderabad (1 supra) has no application to the adjudication by the Tribunal in respect of industrial disputes and therefore failure on the part of the Tribunal in the instant case to follow the procedure envisaged in Managing Director, ECIL, Hyderabad, case (1 supra) does not affect the validity of the award. He further submitted that non-supply of enquiry report itself causes prejudice and that there is no need to prove whether any prejudice is caused to the employee on account of non-supply of the report. But I have not felt convinced with these contentions.

8. A reading of the impugned award indicates that the Tribunal has taken note of the admission made in the counter filed by the petitioner before it to the effect that enquiry report was not supplied, as

respondent No.2 has not asked for it. The Tribunal further observed that for giving an opinion whether domestic enquiry conducted by the petitioner was valid or not, it is necessary to peruse the records and that the petitioner has not produced the records. The Tribunal relying upon the judgment of the Supreme Court in **Managing Director, ECIL, Hyderabad** (1 supra) and on the basis of admission in the counter that enquiry report was not supplied, held that enquiry was not conducted as per the rules following the principles of natural justice and accordingly the order of dismissal was set aside. A direction was given to the petitioner by the Tribunal to reinstate respondent No.2 into service with continuity of service, but without back wages.

9. The Constitution Bench of Supreme Court in **Managing Director, ECIL, Hyderabad** (1 supra) considered as many as 7 questions, in the wake of the earlier judgment of the Supreme Court in **Union of India V. Mohd. Ramzan Khan**^[2]. It is necessary to extract the said questions herein below:

- (i) Whether report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?
- (ii) Whether the report of the enquiry officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?
- (iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?
- (iv) Whether the law laid down in Mohd. Ramzan Khan case will apply to all establishments --- Government and non-Government, public and private sector undertakings?

- (v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?
- (vi) From what date the law requiring furnishing of the report, should come into operation?
- (vii) Since the decision in Mohd. Ramzan Khan case has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after November 20, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to November 20, 1990?

10. In para 29, the Supreme Court held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee in respect of the charges levelled against him and a denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. Having so held the Supreme Court ordained in para 31 as under.

“Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere

with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

Having regard to the above reproduced directions given by the Supreme Court, I am of the view that whenever the Courts/Tribunals at

the hearing of the case comes to the conclusion that enquiry report was not supplied, they should not mechanically set aside the order of punishment on the ground that the report was not furnished and that it is incumbent upon the Courts/Tribunals to apply their judicial mind and only if they find that furnishing of report would have made a difference to the result in the case, they should set aside the order of punishment. Regrettably, the Tribunal having referred to the aforementioned judgment of the Supreme Court failed to follow the dicta laid down therein and acted exactly converse to what the Supreme Court directed the Courts/Tribunals to do by mechanically setting aside the order of the disciplinary authority, dismissing the respondent No.2 from service. The Tribunal failed to ascertain whether non-supply of report would have made any difference to the result in the case.

11. The fallacy in the argument of Sri Jaya Prakash Rao, is exposed by question No.(iv) framed as extracted supra and answered by the Supreme Court in para 30 (iv) of the judgment. It was categorically held that the said ratio would apply to all employees of all establishments whether Government or non-Government, public or private. In the face of this categorical finding of the Constitution Bench there is no room for any argument that the observations made in para 31 of the judgment in **Managing Director, ECIL, Hyderabad** (1 supra) do not apply to industrial disputes. The judgments relied upon by Sri A.K.Jaya Prakash Rao in **Y.Somaiah V. Managing Director, APSRTC, Musheerabad, Hyderabad and others**^[3]; **Delhi Cloth and General Mills Co., Ltd., V. Ludh Budh Singh**^[4]; **State of Maharashtra V. Bhaishankar Avalram Joshi and another**^[5] and **State of Gujarat V. R.G.Teredesai and another**^[6] have absolutely no application to the issue involved in the present case. Except first of the referred judgments which is of this Court, all other judgments were rendered prior to the Constitution Bench Judgment of the Supreme

Court in **Managing Director, ECIL, Hyderabad** (1 supra) and therefore they have no relevance on the issue whether non-supply of enquiry report *per se* vitiates the order passed against the employee or not. The judgment of this Court in **Y. Somaiah** (3 supra) though later in point of time does not help the respondent as this neither fell for consideration nor discussed. Therefore, this contention of the learned counsel for the petitioner is rejected as wholly baseless.

12. For the aforementioned reasons the award under challenge is set aside. The matter is remanded to the Tribunal to follow the procedure laid down in para 31 of the judgment of the Supreme Court in **Managing Director, ECIL, Hyderabad** (1 supra) and decide the case afresh on merits. It is open to the petitioner and respondent No.2 to raise respective contentions on the effect of non-supply of enquiry report and the validity or otherwise of the domestic enquiry by adducing necessary evidence. No costs.

13. As a sequel to disposal of the writ petition, W.P.M.P.No.35274 of 2005 is dismissed as infructuous.

(C.V.NAGARJUNA REDDY, J)

Date: October 3, 2007.
BSB

[\[1\]](#) (1993) 4 Supreme Court Cases 727

[\[2\]](#) (1991) 1 SCC 588

[\[3\]](#) 1998 (4) ALD 2

[\[4\]](#) 1972 (1) LLJ 180

[\[5\]](#) AIR 1969 SC 1302

[\[6\]](#) AIR 1969 SC 1294